

Imseeh (Migration) [2018] AATA 3443 (29 August 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Ramzi Michel Nu'man Imseeh
CASE NUMBER:	1701719
DIBP REFERENCE(S):	CLF2013/97704
MEMBER:	Moir Brophy
DATE:	29 August 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Statement made on 29 August 2018 at 4:06pm

CATCHWORDS

Migration – Partner (Residence (Class BS) – Subclass 801(Spouse) – Genuine and continuing relationship – Discrepancies between Sponsor and Visa applicant's responses – Lack of detail of each other's daily routines or finances – Inconsistent recollections of joint social activities – Decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5F, 65, 359A
Migration Regulations 1994, r 1.15A Schedule 2 cl 801.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 19 January 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 3 May 2013 on the basis of his relationship with his sponsor. At that time, Class BS contained only one subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in Part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 because the delegate was not satisfied they were in a genuine and continuing relationship.
4. The applicant, Mr Ramzi Michel Nu'man Imseeh appeared before the Tribunal on 9 April 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor Ms Rhoda Michael and from the father of the sponsor Michael Awad. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Standard) and English languages.
5. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
7. *Background*
8. The applicant was born on 3 January 1973 in Jordan. He has not declared any previous relationships. His parents are deceased, he has one brother and one sister in Australia and he has four sisters and one brother in Jordan.
9. The applicant first came to Australia on a Prospective Marriage (subclass 300) visa on 27 January 2013. The parties were married on 9 March 2013. On 3 May 2013 he lodged an application for a Partner (Temporary)(Class UK) Subclass 820) visa and a Partner (Residence)(Class BS) (Subclass 801) on the grounds of being in a spousal relationship with an Australian citizen Ms Rhoda Michel (the sponsor).
10. The applicant's sponsor was born in Australia on 18 March 1977. She was previously married to Irshaid Ibrahim-Khalil in the period from 2 October 2004 to 25 May 2008. There was one child of the marriage, a son born in 2005. Her parents, two brothers and one sister reside in Australia.
11. The parties stated they met in person on 11 June 2010 at Jordan Airport. They committed to a long term relationship on 8 July 2010 and held an engagement ceremony that month. The parties were married on 9 March 2013.
12. A temporary visa (Subclass 820) was granted on 31 May 2013.

13. In the Record of Decision, a copy of which the applicant provided to the Tribunal, the delegate stated he was not able to be satisfied the relationship had progressed or that joint financial resources had been used to support each other. The delegate stated there had been a paucity of detail provided and in that context he was not satisfied the nature of the household was that of a genuine spousal couple or that there was a commitment by the visa applicant to a long term relationship with the sponsor.
14. Prior to the hearing the applicant provided documents to the Tribunal including but not limited to the following;
- evidence of communication between the parties;
 - photographs of the parties in social situations;
 - a submission from the representative;
 - a letter from the Father of the sponsor;
 - statement from an account in joint names for the period from 4 November 2013 to 3 February 2018;
 - a statement from the sponsor dated 5 January 2018;
 - statement from an account held in the name of the sponsor for the period from 4 June 2013 to 3 November 2017;..
 - a job activity agreement dated 2 June 2016 for the sponsor;
 - results of an MRI scan of right shoulder of the sponsor dated 21 September 2016;
 - a medical certificate dated 15 February 2017 provided to Centrelink for the sponsor;
 - a WorkCover New South Wales certificate of capacity for the sponsor dated 27 September 2016;
 - a WorkCover New South Wales certificate of capacity for the sponsor dated 5 January 2017;
 - a WorkCover New South Wales certificate of capacity for the sponsor dated 10th of October 2016;
 - a letter from the supervisor of independent bakery dated 17 April 2018;
 - a letter from the Minister of their local church dated 20 April 2018;
 - statement from an account held in the name of the applicant for the period 9 February 2013 to 8 February 2017;
 - a statement from the sponsor dated 15 July 2010 setting out the circumstances in which she met the applicant;

- documents dated July 2014 relating to medical investigations carried out on the sponsor;
- a medical certificate dated February 2018 provided to Centrelink for the sponsor;
- a Centrelink income statement in the name of the sponsor dated 16 April 2018.

CONSIDERATION OF CLAIMS AND EVIDENCE

15. The issue in the present case is whether the applicant and her sponsoring spouse continue to be in a genuine and continuing relationship.
16. In making its findings, the Tribunal has considered the documents contained in the Department and Tribunal files as well as the oral evidence provided at the hearing by the applicant, her sponsor and the witness and the submissions received after the hearing.
17. There were a number of inconsistencies in the evidence given at the time of hearing and these inconsistencies were put to the parties following the hearing in accordance with section 359A of the Act. The Tribunal explained the relevance and the consequences of relying on that information. The discrepancies were as follows:
 - At the time of hearing the sponsor said her father owned the house where they lived. She said that they did not pay rent but that she pays the water and electricity. She said she pays the full amount of the bills which are in her parent's name. She said that she pays out of the joint account and she pays the accounts at the post office. This was not consistent with the evidence given by the applicant that he and the sponsor do not pay rent and they make a contribution by buying the groceries and sometimes they contribute to the payment of the bills. This was not consistent with the evidence given by the father of the sponsor who said the applicant and the sponsor pay him \$100 per week as their share of the rent and they generally pay it on a Sunday in cash. He said his daughter pays the utility bills. She pays at the post office.
 - At the time of hearing the sponsor said she was presently not working and that she had been on new start as a jobseeker since 21 March 2015. She said prior to that she had worked at a blind factory. She said in addition to newstart she received a family allowance payment of \$296 per fortnight and she receives \$16 per fortnight in child support. This was not consistent with the evidence given by the applicant that the sponsor does not work and that she last worked six or seven months ago. He said her last work had been at a bakery working on a computer but it was not the bakery that he works for. He initially said the sponsor was not in receipt of any income but then retracted that statement and said she gets a Centrelink income but he didn't know on what basis she was paid, he thought it may be that she was unemployed and looking for work. He said she did not receive child support payments.
 - At the time of hearing the sponsor said that the applicant worked on a casual basis for three days a week as a cleaner in a bakery. She said it was called Industry Bakery and it was at Moorebank. She said he worked from 8 am to 4 pm three days a week and that he was employed for 15 hours a week. When pointed out to her that 8am to 4 pm three days a week does not equate to 15 hours the sponsor revised her

evidence to say he worked 24 hours per week and for that work he was paid \$327 per week. She said that amount was electronically deposited into their joint account. She said that was the only work he had done since he arrived in Australia. This was not consistent with the evidence the applicant gave at hearing that he worked as a cleaner in a bakery on a casual basis three days a week. He said that the days can change and they just ring him on the morning of the day they want him to work. He said he worked 15 hours per week from 8am to 4 pm and for that work he was paid \$327 net. His pay is deposited into an account in his name only and the sponsor has a card on that account. He said he had been working at the bakery for 2.5 years. Prior to working at the bakery he said he did some work for his brother kitchen painting. He said he did that for the first 6 to 7 months after he came to Australia. He then worked for his brother-in-law for one year cleaning cars.

- At the hearing the sponsor told the Tribunal that she, the applicant and her son had celebrated the orthodox Easter with the applicant's brother and his family the day before the hearing. This was inconsistent with the evidence the applicant gave that he and the sponsor had attended the celebrations at his brother's home but the sponsor's son did not go as he wanted to stay home and play on his PlayStation. This evidence was not consistent with the evidence given by the father of the sponsor who said the applicant worked on the Sunday before the hearing and the family all had lunch together. He said he, his wife, his daughter, her son and their other son Mark ate lunch together. They ate chicken and rice. The applicant told the Tribunal he and the sponsor had chicken and rice together the previous evening.
- The sponsor told the Tribunal the sister of the applicant Lucy lives at Bossley Park and she and the applicant see her monthly. She said Lucy had three sons and a daughter and she and the applicant had attended the wedding of the daughter. The boys are not married but one son has a partner. This was not consistent with the evidence the applicant gave at the time of hearing that the son and daughter of his sister Lucy were married and they had married prior to his coming to Australia so neither he nor the sponsor attended their weddings.
- The sponsor told the Tribunal the engagement party for her and the applicant was in Jordan and 200 people attended. This was not consistent with the evidence the applicant gave at hearing that about 400 people attended the engagement party in Jordan.
- The sponsor told the Tribunal she and the applicant had been married at Toongabbie Church which was the church her parents attended. There were 400 guests at their wedding and the reception was at the Cafe Siena in Wetherill Park. This was not consistent with the evidence the applicant gave at hearing that about 500 people attended their wedding and he was not able to say where the reception had been held.
- The sponsor told the Tribunal she and the applicant spent their wedding night at a Novotel hotel in the city but she did not know which one. This was not consistent with the evidence the applicant gave at the hearing that he and the sponsor had spent their wedding night at home.

18. The visa applicant was given the opportunity to address those inconsistencies as outlined above. A further submission from the visa applicant was received at the Tribunal on 11 May 2018. Those submissions have been taken into account.
19. The evidence given by the visa applicant at the time of hearing was confused, conflicting and unconvincing. The Tribunal was concerned the visa applicant frequently sought to adjust his answers and sought wherever possible to evade giving an answer especially when the questions pertained to the party's daily routines or finances. The Tribunal did not consider it plausible that he could fail to remember pertinent details about whether the son of the sponsor had been with them the day prior to the hearing, where they spent their wedding night and where their wedding reception was held. The Tribunal was concerned the answers the visa applicant gave were deliberately vague in an attempt to not disclose any information he considered may be prejudicial to his claim. The lack of knowledge and the frequent shifting of evidence displayed by the visa applicant were not consistent with relationship the parties claimed to have. Whilst it is appreciated Tribunal proceedings can be very difficult for parties and this stress can of itself lead to some inconsistencies in the evidence given, the Tribunal is not satisfied the explanations given are sufficient to overcome the cumulative effect of the inconsistencies.
20. The cumulative effect of the inconsistencies coupled with the evasiveness of the visa applicant was such that the Tribunal did not consider him to be a credible witness. The Tribunal does not place significant weight on his evidence unless it is corroborated by reliable evidence from other sources.

Whether the parties are in a spouse or de facto relationship

21. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
22. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

23. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. There is nothing in the information before the Tribunal to cast doubt on the validity of the parties' marriage on 9 March 2013 and it was not disputed by the delegate. Consequently, in the absence of any evidence to the contrary, the Tribunal finds that, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

24. *Financial*

25. At the time of hearing the visa applicant and the sponsor gave consistent evidence they were currently living at the home of the sponsor's father. They lived there with the sponsor's parents and her son. One of the sponsor's brothers also lived there and the other brother lived there intermittently. Their evidence as to what they paid was not consistent. The sponsor said that they did not pay rent but that she pays the water and electricity. She said she pays the full amount of the bills which are in her parent's name. She said that she pays out of the joint account and she pays the accounts at the post office. This was not consistent with the evidence given by the applicant that he and the sponsor do not pay rent and they make a contribution by buying the groceries and sometimes they contribute to the payment of the bills. This was not consistent with the evidence given by the father of the sponsor who said the applicant and the sponsor pay him \$100 per week as their share of the rent and they generally pay it on a Sunday in cash. He said his daughter pays the utility bills and she pays at the post office.
26. As stated previously the Tribunal was concerned at the lack of consistency in the evidence given as to the financial arrangements of the parties.
27. There was no evidence to suggest the visa applicant and the sponsor had any joint legal obligations. There was no evidence of any shared loans, credit cards or savings.
28. The sponsor said she was presently not working and that she had been on new start as a jobseeker since 21 March 2015. She said in addition to newstart she received a family allowance payment of \$296 per fortnight and she receives \$16 per fortnight in child support. The monies she receives are paid into an account in her name and the applicant does not have access to that account. The applicant worked on a casual basis for three days a week as a cleaner in a bakery. He receives \$327 per week and those monies are electronically deposited into their joint account.
29. Bank statements of the account held in joint names provided to the Tribunal were indicative of the visa applicant's wages being paid into the account and of the account being used for daily expenses such as food and petrol. There was no evidence the applicant was able to or actually did access the funds in the joint account. His evidence was that the account was in fact only in his name but only the sponsor used it as he only dealt in cash.
30. On the evidence before the Tribunal, the Tribunal is not satisfied that at the time of application or at the time of decision the applicant and her sponsor had any shared financial responsibilities or had pooled their resources.
31. The Tribunal places considerable weight on this aspect of the relationship.

32. *Nature of the Household*

33. The parties gave consistent evidence they had resided together at their present address since the visa applicant arrived in Australia. They reside together with the son of the sponsor, her parents and her brothers.
34. At the time of hearing the parties gave consistent evidence the sponsor and her mother do the majority of housework, the washing and cooking. The parties do the grocery shopping together.

35. The Tribunal accepts the parties reside as part of the one household. However the Tribunal was not convinced on the evidence the parties were living together in a genuine relationship.
36. The Tribunal was concerned by the inconsistencies in the evidence as to the hours worked by the applicant, and the sponsor's employment history since they were married. The Tribunal does not accept as plausible that you would not know with some specificity the daily routines of your partner if you were living in a genuine and continuing spousal relationship. T
37. On the basis of the evidence the Tribunal has placed weight on, the Tribunal is not able to distinguish between a situation where the applicant and sponsor are living as a couple, or alternatively where the applicant is living with the sponsor and her family until his visa situation is resolved.

38. *Social Aspects of the Relationship*

39. At the time of application the visa applicant and his sponsor provided two relationship statements from the parents of the sponsor. Those statements did not provided an informed assessment as to why they regarded the relationship to be genuine and continuing.
40. The Tribunal accepts on the basis of the photographic evidence that the parties have socialised together with members of their immediate families and some mutual friends.
41. After considering all the information regarding the social aspects of the parties' relationship, the Tribunal is satisfied their relationship is supported by their families and some friends. The Tribunal is not satisfied the evidence of overseas travel by the applicant in 2014 supports the contention the parties are in a genuine relationship. The Tribunal is also not satisfied the parties have established that at the current time they present to the community at large as two people in a genuine relationship. In weighing all of the available evidence regarding the social aspects of the parties' relationship, I find it is not clearly indicative of whether the parties are, or are not, a couple in a close and genuine spousal relationship.

42. *Nature of the persons commitment to each other*

43. The evidence as to the parties commitment to each other was, when considered in its totality confused and unconvincing. There were a number of inconsistencies in the parties' oral evidence and these mainly related to knowledge of each other's daily routines and financial issues. The lack of knowledge of those matters displayed by the visa applicant was not indicative of a genuine and continuing relationship.
44. The confusion as to whether the parties spent their wedding night at a hotel or at home, how many people attended their engagement celebration and where their wedding reception was held was put to the visa applicant after the hearing in accordance with the requirements of section 359A and the Tribunal has considered the explanations provided. The Tribunal did not find the explanation provided by the visa applicant to be persuasive, in that given the context of a much anticipated event such as your wedding after having spent so little time together in the same country there would be such confusion over whether or not you went into the city afterwards. The Tribunal does not regard it as plausible the parties would not remember with some specificity such important details. The Tribunal accepts the place the reception was held may not have been remembered by the applicant given he had only recently arrived in Australia but whether you went to a hotel the night of your wedding is an aspect you would remember. Conflicts in the evidence about such events are in the Tribunal's view either indicative of the event not taking place or it not taking place in the manner described.

45. The visa applicant was unfamiliar with the details as to who had attended a celebration at his brother's house the day prior to the hearing. At the hearing the sponsor told the Tribunal that she, the applicant and her son had celebrated the orthodox Easter with the applicant's brother and his family the day before the hearing. This was inconsistent with the evidence the applicant gave that he and the sponsor had attended the celebrations at his brother's home but the sponsor's son did not go as he wanted to stay home and play on his PlayStation. Those inconsistencies in the evidence were put to the review applicant after the hearing in accordance with the requirements of section 359A and the Tribunal has considered the explanations provided. The Tribunal does not regard the explanation given to be persuasive. It is not plausible that you would not know whether your partner's son accompanied you on an outing the day before the hearing especially given it was only very recently. Similarly the confusion as to whether the parties had attended the wedding of the son and daughter of the visa applicant was in the Tribunal view an indication the parties were not in the relationship they claimed. The Tribunal was concerned there was a lack of candour in the giving of the evidence by both parties in an attempt to present their relationship as being a genuine and continuing relationship. Conflicts in the evidence about such recent events are in the Tribunal's view either indicative of the event not taking place or it not taking place on the manner described.
46. The Tribunal regarded the cumulative effect of the inconsistencies in the evidence of the visa applicant as being indicative of the relationship not being characterised by a mutual commitment to a shared life together. The Tribunal places considerable weight on this evidence as it indicates either the parties do not communicate as claimed or they do not know each other as well as parties in a committed relationship would.
47. On the evidence before the Tribunal the Tribunal is not satisfied the applicant and her sponsor provide one another with companionship and emotional support, or that they see the relationship as long-term. While the Tribunal acknowledges the parties reside at the same address the Tribunal is not satisfied they live together as a couple.
48. The Tribunal is not satisfied that the parties were, at the time of application, or are currently in a genuine relationship. The Tribunal is not satisfied on the evidence that the applicant and his sponsor are committed to a shared life as husband and wife to the exclusion of all others.
49. **CONCLUSION**
50. Given the above findings, the Tribunal is not satisfied that at the time the visa application was lodged and at the time of this decision the parties have a mutual commitment to a shared life as husband and wife to the exclusion of all others, and that the relationship is genuine and continuing. There is no evidence to establish the parties do not live together at the present time at the same residential address. I am however not convinced the applicant resides at this location in a committed relationship with the sponsor, rather than as an individual person who is not in a committed relationship.
51. Upon considering the overall evidence before me and on the basis of the findings I have made I am not satisfied the applicant has established he is currently living in a genuine and committed spousal relationship with the sponsor.
52. Given these findings the Tribunal, on balance, is not satisfied that at the time of this decision the parties are in a spousal relationship.
53. Therefore the applicant does not meet cl.801.221(2)(c).
54. Furthermore, the applicant has not claimed, and there is no evidence before the Tribunal, that the applicant meets the alternative criteria in cl.801.221 (2A), (3), (4), (5) or (6).

55. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

56.

57.

DECISION

58. The Tribunal affirms the decision not to grant the applicant a Partner (Residence) (Class BS) visa.

Moira Brophy
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).